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1st Session

SENATE

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105-7

AGREEMENT WITH HONG KONG ON THE TRANSFER OF
SENTENCED PERSONS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
STATES OF AMERICA AND THE GOVERNMENT OF HONG KONG
FOR THE TRANSFER OF SENTENCED PERSONS, SIGNED AT
HONG KONG ON APRIL 15, 1997



MAY 6, 1997.—Agreement was read the first time and, together with the
accompanying papers, referred to the Committee on Foreign Relations
and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

39-118

WASHINGTON : 1997

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 5, 1997.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Agreement Between the Government of the United States and the Government of Hong Kong for the Transfer of Sentenced Persons signed at Hong Kong on April 15, 1997. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Agreement.

At present, transfers of sentenced persons between the United States and Hong Kong (in either direction) are conducted pursuant to the 1983 multilateral Council of Europe Convention on the Transfer of Sentenced Persons, which is in force for both the United States and the United Kingdom, and which the latter has extended to Hong Kong. Effective July 1, 1997, however, when Hong Kong reverts to the sovereignty of the People's Republic of China, the Council of Europe Convention will no longer provide a basis for such transfers.

The agreement signed on April 15, 1997, will provide a basis for such transfers to continue after Hong Kong's reversion. The agreement is modeled after both the Council of Europe Convention and other bilateral prisoner transfer treaties to which the United States is a party. It would establish essentially the same procedures as are now followed with respect to transfers of prisoners between the United States and Hong Kong, and would continue the requirement that all transfers be consented to by the sentencing state, the sentenced person, and the receiving state. When the sentenced person has been sentenced under the laws of a State of the United States, the consent of the authorities of that State will also be required.

I recommend that the Senate of the United States promptly give its advice and consent to the ratification of this Agreement.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 21, 1997.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Agreement between the Government of the United States of America and the Government of Hong Kong for the Transfer of Sentenced Persons ("the Agreement"), which was signed at Hong Kong on April 15, 1997. I recommend that the Agreement be transmitted to the Senate for its advice and consent to ratification.

The purpose of the Agreement is to facilitate, after Hong Kong reverts to the sovereignty of the People's Republic of China on July 1, 1997, the transfer of persons sentenced in the United States and in Hong Kong to their home territory to serve their sentences. The Agreement achieves this purpose by establishing procedures that can be initiated by sentenced persons who prefer to serve their sentences in their home territory. The means employed to achieve this purpose are similar in all important respects to those embodied in existing bilateral prisoner transfer treaties in force between the United States and eight other countries, and in the multilateral Council of Europe Convention on the Transfer of Sentenced Persons.

The United States and Hong Kong have been exchanging prisoners under the terms of the Council of Europe Convention, to which the United States and the United Kingdom are parties and which has been extended by the latter to Hong Kong and other specific territories under U.K. sovereignty. The People's Republic of China is not a party to the Council of Europe Convention and has not agreed that the Convention should continue to apply to Hong Kong after reversion to Chinese sovereignty on July 1, 1997. Nonetheless, the Chinese government, acting through the Sino-U.K. Joint Liaison Group, authorized the Hong Kong government to negotiate a bilateral agreement on transfer of sentenced persons with the United States to apply after reversion. The attached agreement represents the results of these authorized negotiations.

Article 1 contains definitions of the terms used in the Agreement.

The general principles of the Agreement are stated in Article 2, in which the parties undertake to apply the Agreement in their respective territories and to transfer sentenced persons to the other party to serve the sentence imposed by the transferring party. For these purposes, Hong Kong constitutes Hong Kong Island, Kowloon, and the New Territories.

Article 3 provides that each party designate a “central authority” to implement the Agreement; both parties designate their respective Attorneys General.

Article 4 sets out the conditions for transfer, which are: that the act or omission for which the sentence has been imposed constitutes a crime under the laws of the receiving Party; that the sentenced person is a permanent resident of Hong Kong (where Hong Kong is the receiving Party); that the sentenced person is a citizen or national of the United States (where the United States is the receiving party); that at least one year of the sentence remains to be served at the time the request for transfer is received (in exceptional cases, the parties may agree to a transfer even if less time has been served); that the judgment is final and no further proceedings relating to the offenses are pending within the jurisdiction of the transferring party; and that both Parties and the person to be transferred agree to the transfer. When the United States is the transferring party, and the sentenced person has been sentenced by a state court of the United States, the consent of state authorities is also required in addition to the consent of federal authorities.

Article 5 requires that the person to be transferred has consented voluntarily and with knowledge of the consequences thereof, and that an official designated by the receiving party has verified that the consent was voluntary.

Article 6 provides that enforcement of the sentence by the transferring Party will be suspended once the sentenced person is taken charge of by the receiving Party and that the sentence shall not be enforced if the receiving Party considers enforcement of the sentence to have been completed.

Article 7 obliges a Party to inform any sentenced person to whom the Agreement may apply of the substance of the Agreement. Provision is also made for keeping the sentenced person informed of the processing of a transfer request.

Article 7 also provides modalities for processing requests and replies and specifies supporting documents that may be required in connection with transfer requests. It permits a request for transfer of a sentenced person from one Party to the other to be made by the transferring (sentencing) Party, the receiving Party, or the sentenced person.

Article 8 addresses the continued enforcement of the sentence after transfer, providing that such enforcement shall be governed by the laws of the receiving Party and may be adapted in certain circumstances.

Article 9 provides, however, that the transferring Party shall retain exclusive jurisdiction for purposes of reviewing the conviction.

Article 10 requires either Party to cooperate in facilitating the transit of a sentenced person being transferred to another Party from a third jurisdiction.

Article 11 addresses the language to be used in making requests and the allocation of expenses. Written communications between the Parties must be in an official language of the Party to which they are addressed. It is understood that, for these purposes, English will be considered the official language of the United States.

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Article 12 provides for the settlement of disputes through diplomatic channels if the Central Authorities are unable to reach agreement.

Article 13 permits application of the Agreement to persons sentenced before or after the Agreement's entry into force.

Article 14 provides that the agreement will enter into force thirty days after the Parties have notified each other in writing that their respective requirements for entry into force of the Agreement have been completed. Either party may terminate the Agreement upon three months written notice to the other Party.

It is my belief that this Agreement affords substantial benefits to the United States. The Agreement is fully consistent with the provisions of Public Law 95-144, 18 U.S.C. §§ 4110-4115, enacted by the Congress to implement treaties relating to the transfer of offenders to or from foreign countries. Consistent with the Hong Kong Policy Act of 1992, we would consider Hong Kong to be a country for purposes of Public Law 95-144. Thus no new legislation will be required.

The Department of Justice joins in recommending that this Agreement be transmitted to the Senate at the earliest possible opportunity for its advice and consent to ratification, subject to the understanding previously described.

Respectfully submitted,

MADELEINE ALBRIGHT.

AGREEMENT BETWEEN
THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF HONG KONG
FOR THE TRANSFER OF SENTENCED PERSONS

The Government of the United States of America, and the Government of Hong Kong, having been duly authorised to conclude this agreement by the sovereign government which is responsible for the foreign affairs relating to Hong Kong,

Desiring to cooperate fully in the transfer of sentenced persons by enabling such persons to serve sentences of imprisonment, confinement, or other form of deprivation of liberty in the jurisdiction of which they are citizens, nationals, or permanent residents, thereby facilitating their successfully reintegration into society;

Have agreed as follows:

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ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

- (a) "transferring Party" means the Party from whose jurisdiction the sentenced person may be, or has been, transferred;
- (b) "receiving Party" means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;
- (c) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- (d) "sentenced person" means any person who has been sentenced by a court in the jurisdiction of the transferring Party;
- (e) "permanent resident" means a permanent resident of Hong Kong;
- (f) "citizen or national" means a citizen or national of the United States of America.

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ARTICLE 2

GENERAL PRINCIPLES

(1) This Agreement shall apply to the United States of America, its territories and possessions, and with respect to Hong Kong, Hong Kong Island, Kowloon and the New Territories.

(2) A sentenced person may be transferred from the jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him or her by the transferring Party.

ARTICLE 3

CENTRAL AUTHORITIES

(1) Each Party shall designate a Central Authority to implement the provisions of this Agreement.

(2) The Central Authority for the United States of America shall be the Attorney General. The Central Authority for Hong Kong shall be the Attorney General. Either party may change its Central Authority, in which case it shall notify the other of the change.

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ARTICLE 4
CONDITIONS FOR TRANSFER

(1) A sentenced person may be transferred only on the following conditions:

(a) the acts or omissions for which the sentence has been imposed would constitute a criminal offence under the laws of the receiving Party; provided, however, that this condition shall not be interpreted to require that the offence described in the laws of both Parties be identical with respect to matters that do not affect the essential nature of the offence;

(b) where Hong Kong is the receiving Party, the sentenced person is a permanent resident of Hong Kong;

(c) where the United States of America is the receiving Party, the sentenced person is a citizen or national of the United States of America;

(d) at the time the request for transfer is received, the sentenced person has at least one year of the sentence to serve, or is serving an indeterminate or life sentence;

(e) the judgment is final, and no further proceedings relating to the offence are pending within the jurisdiction of the transferring Party;

(f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that,

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where in view of the age or physical or mental condition of the sentenced person, either Party considers it necessary, the sentenced person's consent may be given by the sentenced person's legal representative;

(g) when the United States of America is the transferring Party, and when the sentenced person has been sentenced by the courts pursuant to the laws of a State of the United States of America, the consent of the authorities of the State, as well as the consent of the federal authorities, shall be required for the transfer.

(2) In exceptional cases, the Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1(d) of this Article.

ARTICLE 5

VERIFICATION OF CONSENT

(1) Each Party shall ensure that the person who gives consent to the transfer as required by Article 4(1)(f) does so voluntarily and with knowledge of the consequences thereof.

(2) The transferring Party shall permit an official designated by the receiving Party personally to verify, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(1)(f) is given voluntarily and with knowledge of the consequences thereof.

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ARTICLE 6

EFFECT OF TRANSFER FOR TRANSFERRING PARTY

- (1) The taking into charge of the sentenced person by the authorities of the receiving Party shall have the effect of suspending the enforcement of the sentence by the authorities in the transferring Party.
- (2) The transferring Party shall not enforce the sentence if the receiving Party considers enforcement of the sentence to have been completed.

ARTICLE 7

PROCEDURES FOR TRANSFER

- (1) The Parties shall inform sentenced persons of their right to transfer under this Agreement. If a sentenced person wishes to be transferred, he or she may express such a wish to either Party which shall so inform the other Party in writing.
- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. Each Party shall promptly inform the other Party of its decision whether to agree to a request for transfer.
- (3) Requests for transfer shall be in writing and shall include the following information:
 - (a) the name, date and place of birth of the sentenced person;

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(b) a statement indicating the citizenship, nationality, or residence status of the sentenced person; and

(c) the location of the sentenced person and permanent address, if available.

(4) Where a request for transfer has been made, the transferring Party shall, to the extent practicable, provide the receiving Party with the following information in writing:

(a) a statement of the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence;

(b) the nature and duration of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behavior, pre-trial confinement or other reasons;

(c) a copy of the certificate or record of conviction and sentence.

(5) Either Party shall, to the extent practicable, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether to agree to the transfer. In this regard, the receiving Party shall advise the transferring Party whether it intends to adapt the sentence in accordance with Article 8(3).

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(6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

(7) The Parties shall inform the sentenced person in writing of any action taken by the transferring Party or the receiving Party under the preceding paragraphs of this Article.

ARTICLE 8

CONTINUED ENFORCEMENT OF SENTENCE

(1) The receiving Party shall enforce the sentence as if the sentence had been imposed in the receiving Party or adapt the sentence under the conditions set forth in paragraph 3 of this Article.

(2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.

(3) If the sentence is by its nature or duration incompatible with the law of the receiving Party that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the

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appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration.

(4) The receiving Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of his or her status under the law of the transferring Party.

(5) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party to pardon the sentenced person, or of any other decision or measure of the transferring Party that results in cancellation or reduction of the sentence.

(6) The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence. Either Party may, at any time, request a special report on the status of the enforcement of an individual sentence.

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ARTICLE 9

RETENTION OF JURISDICTION

The transferring Party shall retain exclusive jurisdiction for the review of convictions and sentences issued by its courts.

ARTICLE 10

TRANSIT OF SENTENCED PERSONS

If either Party transfers a sentenced person from another jurisdiction, the other Party shall cooperate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 11

LANGUAGE AND EXPENSES

(1) Written communications between the Parties shall be in an official language of the Party to which the communication is addressed.

(2) Any expenses incurred in relation to the transfer of the sentenced person or the continued enforcement of the sentence after transfer shall be borne by the receiving Party, except costs incurred by the transferring Party exclusively within the jurisdiction of the transferring Party. The receiving Party may,

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however, seek to recover all or part of the costs of transfer from the sentenced person.

ARTICLE 12 SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application, or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 13 APPLICATION

This Agreement shall be applicable to the transfer of sentenced persons who have been sentenced either before or after the entry into force of this Agreement.

ARTICLE 14 FINAL PROVISIONS

(1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been completed.

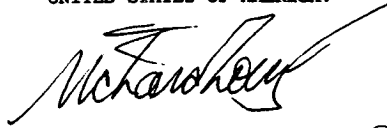
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(2) Either Party may terminate this Agreement at any time by giving notice to the other in writing. In that event, this Agreement shall cease to have effect three months after the date of receipt of the notice.

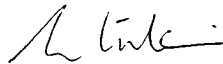
IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Hong Kong in duplicate, on this fifteenth day of April in the year of 1997, in the English and Chinese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



FOR THE GOVERNMENT OF
HONG KONG:



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